

United States Court  
Southern District of Texas  
FILED

AUG 13 2003

C.H.

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES  
LITIGATION

§ Civil Action No. H-01-3624  
§ (Consolidated)

This Document Relates To:

MARK NEWBY, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

CLASS ACTION

LEAD PLAINTIFF'S NOTICE OF RECENT AUTHORITY  
IN SUPPORT OF OPPOSITION TO THE  
BANK DEFENDANTS' MOTIONS TO DISMISS

1617

Lead Plaintiff respectfully submits this Notice of Recent Authority to bring to the Court's attention the Second Circuit's opinion in *Levitt v. Bear Stearns & Co.*, No. 02-7860, 2003 U.S. App. LEXIS 16539 (2d Cir. Aug. 13, 2003).

In *Levitt*, the Second Circuit reversed a district court's dismissal of a complaint as time barred in a federal securities fraud class action. *Id.* at \*28-\*29. The Court of Appeal held because defendant Bear Stearns was a secondary actor (like the Bank Defendants here), *Levitt* was "not a case where Plaintiffs could allege a prima facie case against Bear Stearns simply by examining ... financial statements and media coverage of the company." *Id.* at \*23-\*24. This, held the Second Circuit, distinguished the case before it from the "typical storm warnings case ... brought against ... officers or directors." *Id.* at 23. Likewise, here the Bank Defendants are secondary actors and their cases concerning inquiry notice are distinguishable.

The Second Circuit also held:

It makes little sense from a policy perspective to require specific factual allegations – on pain of dismissal in cases of this sort – and then to punish the pleader for waiting until the appropriate factual information can be gathered by dismissing the complaint as time barred.

*Id.* at \*26-\*27.

As Lead Plaintiff explained in its Opposition, from the beginning of this case Lead Plaintiff has sought to identify all culpable entities and bring appropriate claims. Lead Plaintiff brought the latest amendment timely, in accordance with the Court's Orders and schedule, when amendment could be accomplished efficiently and comprehensively, and after notice of the culpable entities'

conduct. The reasoning of the Second Circuit in *Levitt* supports Lead Plaintiff's contention that the timing of Lead Plaintiff's amendment was appropriate.

DATED: August 15, 2003

Respectfully submitted,

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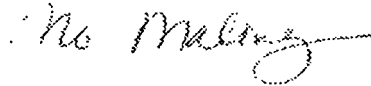
**Washington Counsel**

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S NOTICE OF RECENT AUTHORITY IN SUPPORT OF OPPOSITION TO THE BANK DEFENDANTS' MOTIONS TO DISMISS document has been served by sending a copy via electronic mail to serve@ESL3624.com on this 15th day of August, 2003.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S NOTICE OF RECENT AUTHORITY IN SUPPORT OF OPPOSITION TO THE BANK DEFENDANTS' MOTIONS TO DISMISS document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 15th day of August, 2003.

Carolyn S. Schwartz  
United States Trustee, Region 2  
33 Whitehall Street, 21st Floor  
New York, NY 10004



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Mo Maloney